

Memorandum

Date : OCT 30 1997

To : Robert Treanor, Executive Director
Fish and Game Commission
1416 Ninth Street, 13th Floor
Sacramento, California 95814

From : Department of Water Resources

Subject : Comments on Proposal to Modify the Commission's Special Order for Incidental Take of Spring-run Chinook Salmon

On October 2, 1997 the Fish and Game Commission held a workshop to receive information concerning the export-to-inflow ratio (E/I ratio) and possible modifications to its Special Order for Incidental Take of Spring-run Chinook Salmon. I attended the workshop to present the Department of Water Resource's view on E/I ratios and to update the Commission on the CALFED Operations Group Spring-run Protection Plan. As mentioned at the workshop, we believe the Special Order, as it relates to the Central Valley Project and State Water Project operations, protects the spring-run during the candidacy period and should not be modified.

Since the workshop, the Ops Group has further modified the Plan to respond to fishery and environmental group concerns that the Plan more clearly define CVP and SWP actions that would be initiated if spring-run salmon are detected at the Delta pumping facilities. These changes were based on recommendations from the Data Assessment Team and developed in close coordination with the Department of Fish and Game. A revised copy of the Plan is enclosed. Two changes of particular interest are:

- Addition of a new indicator of sensitive periods (indicator #10 on page 7): this new criterion is met if the estimated loss of the Coleman late-fall-run chinook salmon exceeds one percent. As planned, these yearling juvenile salmon will be released in discrete groups in November, December and January in the upper Sacramento River. They will be marked with coded-wire tags, so identification will be relatively straightforward. An estimated loss of one percent of these juveniles will be an indication that spring-run chinook salmon yearlings are being impacted by CVP and SWP export operations.
- Modification of what action will be taken if spring-run chinook salmon are impacted by CVP and SWP exports: operational response #3, which begins on page 11 of the Plan, has been expanded to describe the sequence and time frame for recommending, implementing, and reviewing operations changes to provide appropriate protection for spring-run chinook salmon. It goes on to stipulate that if agreement cannot be reached within CALFED, FGC has the final authority to resolve the issue.

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In the future, other modifications may be necessary as conditions, resources, and understanding of spring-run behavior change. If changes to the plan are proposed, they will be carefully reviewed by DAT and approved by DFG.

At the workshop, representatives from Senator Hayden's office and the Bay Institute suggested the Commission modify the Special Order to include a numerical criterion for incidental take of spring-run chinook salmon at the SWP and CVP Delta facilities, similar to the incidental take statement contained in the National Marine Fisheries Service biological opinion for winter-run chinook salmon. For clarity, I would like to point out that the incidental take statement for winter-run chinook salmon requires USBR and DWR to re-initiate consultation with NMFS if the estimated loss of juvenile winter-run chinook salmon exceeds the amount indicated by the incidental take statement. This procedure is specified in the Code of Federal Regulations (50 CFR Section 402.14(l)(4)). Consistent with 50 CFR, NMFS reviews the significance of the take numbers and works with USBR and DWR to develop measures which may reduce impacts of CVP and SWP operations on winter-run chinook salmon. The biological opinion specifies a one percent loss (take) of the estimated number of winter-run juveniles entering the Delta as a condition for the Ops Group to immediately convene to explore additional measures that could be implemented to reduce the rate of take. If a two percent take is likely, then consultation is immediately re-initiated. This procedure is discussed in the enclosed May 12, 1995, NMFS letter to USBR amending the February 12, 1993, CVP-OCAP Biological Opinion for winter-run salmon (pages 8-9).

The steps discussed in the NMFS letter are similar to those used in the Spring-run Salmon Protection Plan. However, consultation with the fishery agency, in this case the Department of Fish and Game, will occur if it is believed that any spring-run chinook salmon are salvaged at the fish protection facilities. Therefore, a statement defining a specific level of take is unnecessary. Furthermore, such a numerical take statement is not practical. Dr. Randall Brown, Chief of DWR Environmental Services Office, has considered whether a numerical take statement for the spring-run chinook salmon this fall and winter can be developed. Enclosed is his view on why such a statement is not practical.

Some comments have been made to the Commission that the Ops Group needs specific mandates to operate effectively. The actions coordinated between project operators and fishery agencies since the Ops Group's formation have been effective and go well beyond legal mandates. There is no need for additional mandates. As mentioned in past letters, the Ops Group was established in 1994 when fourteen federal and State agencies signed the Framework Agreement between the Governor's Water Policy Council of the State of California and the Federal Ecosystem Directorate. The purpose of the Ops Group, as set forth in the Framework Agreement, is to implement fishery protections to resolve conflicts between operations, water quality requirements, and fishery needs in the Bay-Delta Estuary. Many of the actions, and the

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formation of the Ops Group itself, have been voluntary and without specific regulatory mandates. Ops Group efforts have been effective in providing additional protections for fish while meeting the water supply obligations of the CVP and SWP. Following are just a few examples which provide evidence as to the Ops Group's effectiveness:

- The State Water Resources Control Board referenced the Ops Group in its Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary which established objectives for fish and wildlife in the Delta; SWRCB Order WR 95-6, which modified Decision 1485, also incorporates the Ops Group as a mechanism for providing some flexibility in meeting Bay-Delta fishery protections. For example, under both the WQCP and WR 95-6, the Ops Group determines the timing for closure of the Delta Cross Channel gates during November through January. It can also recommend adjustments to the E/I ratio to recover water supplies or provide necessary protection for fish.
- The Ops Group facilitated voluntary changes in CVP and SWP operations in 1995, 1996, and 1997. CVP and SWP exports were reduced during a 31-day pulse flow operation conducted during April and May of each year to improve conditions for juvenile chinook salmon migrating out of the San Joaquin River system and for delta smelt rearing in the South Delta.
- The Ops Group developed a plan to protect both resident and anadromous fish in 1996. When increases in exports were contemplated in the fall to recover water supplies foregone the previous spring, the Ops Group established a team of biologists and project operators to monitor fishery and water quality conditions, and make recommendations for changes in project operations.

It is doubtful that specific mandates could have anticipated the need for this plan or the voluntary changes in project operations made in 1995, 1996, and 1997. Since its first public meeting, the Ops Group has functioned to facilitate coordination of Delta operations through involvement of affected and interested parties. Although not all actions satisfy all parties all of the time, much has been achieved through the efforts of those who have willingly participated in the Ops Group process.

If you have any questions or comments regarding the above information or enclosed material, please call me at (916) 653-6055, Dr. Randal Brown, Chief of the Environmental Services Office, at (916) 227-7531, or your staff may call Curtis Creel at (916) 653-5243.

Sincerely,



Robert G. Potter
Chief Deputy Director

Enclosures

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